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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43098
Plaintiff-Respondent,)	
)	Elmore County Case No.
v.)	CR-2014-2900
)	
JENNIFER L. MONTROSE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Montrose failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with three years fixed, upon her guilty plea to possession of methamphetamine with intent to deliver?

Montrose Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Montrose entered an Alford¹ plea to possession of methamphetamine with intent to deliver and the district court imposed a unified sentence of 10 years, with three years

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

fixed, and retained jurisdiction. (R., pp.43-44, 48-52.) Following the period of retained jurisdiction, the district court suspended Montrose's sentence and placed her on supervised probation for five years. (Order Suspending Sentence after Retained Jurisdiction and Order of Probation (Augmentation).) Montrose filed a notice of appeal timely from the judgment of conviction. (R., pp.53-56.)

Montrose asserts her underlying sentence is excessive in light of her 20-year history of methamphetamine abuse, willingness to participate in treatment, purported regret, and because she was an inmate worker, applied to a college, and had a job and housing in the community. (Appellant's brief, pp.2-4.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum penalty for possession of methamphetamine with intent to deliver is life in prison. I.C. § 37-2732(a)(1)(A). The district court imposed a unified sentence of 10 years, with three years fixed, which falls well within the statutory guidelines. (R., pp.48-52.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Montrose's sentence. (2/20/15 Tr., p.50, L.7 – p.62, L.4.) The state submits that Montrose has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Montrose's conviction and sentence.

DATED this 7th day of January, 2016.

/s/ _____
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of January, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

_____/s/_____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p style="text-align: center;">49</p> <p>1 should at least be given the opportunity to show 2 you that I can be successful at it. 3 This is the third time I've come in for 4 sentencing, Judge. The last time you scared me by 5 saying you were going to charge me with a 6 burglary. 7 THE COURT: Well, I was in error. Ms. 8 Montrose, what that demonstrates to you is that 9 people can make mistakes. 10 THE DEFENDANT: Yes. 11 THE COURT: We're going to talk about that 12 in a moment. 13 THE DEFENDANT: Okay. I don't have any 14 prior felonies to this. I take pride in that. I 15 never wanted to be a felon. However, if you do go 16 ahead and sentence me to the CAPP rider today, is 17 there any possible way that I can get on with my 18 treatment as soon as possible? I was delayed by 19 the judge not signing my paperwork binding me over 20 to felony court by two weeks. With the holidays, 21 I was pushed back another two weeks for 22 sentencing. 23 And then, of course, on the 23rd of 24 January I was set back another four weeks for 25 sentencing. I just want to get on with my</p>	<p style="text-align: center;">50</p> <p>1 programming as soon as possible so I can get on 2 with my life and be able to be a successful 3 citizen, you know, respectful, doing what I should 4 be doing. 5 You're about to make a huge impact on 6 my life. 7 THE COURT: On the plea of guilty I do find 8 that you are guilty of this crime. In an exercise 9 of discretion in sentencing I have applied the 10 Toohill factors. And believe me, Ms. Montrose, 11 the hardest thing that I do as a judge is 12 sentencing. It is extremely difficult. And the 13 reason is that if you take it seriously, and I do, 14 you recognize that you -- that that decision, 15 those things that I'm going to say in a few 16 minutes have a huge impact on you. They have a 17 huge impact on the family and if -- in this case 18 there are no victims, but if there were victims, a 19 huge impact on the victims. And they also have a 20 huge impact on society. Trust me, I understand 21 that probably more than you might imagine. I take 22 what I do very seriously. I try to make sure that 23 what I'm going to do is going to help that person. 24 Now, I get criticized a lot for 25 spending a lot of time explaining to somebody why</p>
<p style="text-align: center;">51</p> <p>1 I'm sentencing the way I am. I believe, because I 2 am having an impact on what happens to you and 3 your life, that you deserve to know why. So I 4 hope it will be okay with you if I spend a few 5 minutes explaining it. 6 Now, you pointed out correctly that it 7 was in error when I suggested you had a burglary 8 and it gives me an opportunity to kind of explain 9 to you a couple of principles because what I 10 notice is most people come into court and they 11 look around and they say I made a mistake. And 12 I'm somebody who likes people to use language to 13 help them with their thought process. It's true 14 that people can say I made a mistake. It is not 15 inappropriate to use that language. But what I 16 like to do is someone who has committed something 17 that's a crime, what I like to do is ask -- to 18 require them instead of using the word mistake to 19 use the word choice. 20 And here's why: Two weeks ago I made a 21 mistake because I didn't read what was in front of 22 me. It wasn't a choice. It was a mistake. 23 Mistakes are hard to avoid. You can avoid bad 24 choices. And so what I like to tell people when 25 they're here in this kind of environment is start</p>	<p style="text-align: center;">52</p> <p>1 thinking about all of these things as choices. 2 These are choices. And why? Because a choice can 3 be controlled. You have the ability to control a 4 choice. 5 Now, because I take this whole 6 sentencing extremely seriously, I want to do 7 what's best for that person. Now, yours isn't a 8 crime against another person. It's really a crime 9 against yourself and your family. Because despite 10 the fact that you're doing drugs, it hurts you and 11 it hurts others around you and it also leads to 12 other bad choices as well. And that's why in our 13 country it is illegal to use methamphetamine and 14 it's illegal to use a lot of substances. The fact 15 of the matter is that those substances do not help 16 you function at all, and, in fact, they do the 17 opposite. 18 THE DEFENDANT: I agree. 19 THE COURT: Okay. So I want to come up with 20 a plan that's going to help you. 21 The reason that I looked at the 22 retained jurisdiction is that I think you need 23 more than five months sober. I'm glad that you 24 are now counting the number of months. That's a 25 good thing. I think you need more than that. You</p>

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1 need a significant amount of time sober. You also
2 need to change the people you're running around
3 with. And unfortunately -- I read this
4 presentence report, so it is unfortunate for you
5 that I know that even while incarcerated you got
6 written up for attempting to contact Mr. Wheeler.
7 Mr. Wheeler is not your best person to be involved
8 with. You got written up.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. And I will tell you if I
11 place you on probation when you come back, there
12 will be a no-contact with Mr. Wheeler. You may
13 not like that, but that's the way it is, whether
14 he is using or isn't using. I know you told the
15 presentence investigator he doesn't use. No, he's
16 just a criminal. I'm sorry.

17 THE DEFENDANT: I understand.

18 THE COURT: Okay? He's just a criminal.
19 And if he were really someone who cared about you,
20 he wouldn't be letting you use methamphetamine.
21 If he's not using methamphetamine and you're being
22 truthful about that --

23 THE DEFENDANT: Yes.

24 THE COURT: I don't want you to tell me
25 anything. I'm just telling you if that's, in

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1 being a parent.

2 So, Ms. Montrose, I think it's
3 important for you to get programming that's going
4 to help you with a couple things. And what
5 happens on a rider is they're going to give you
6 parenting skills, they're going to give you work
7 skills, they're going to -- and parenting skills
8 apply to life. You can use parenting skills in
9 your interactions with other people. They will
10 help you learn how to work. They will help you to
11 deal with your drug addiction. They also will
12 help you to deal with making better choices in the
13 partners that you seek. So far you haven't done
14 too well with the partners that you've hooked up
15 with. You have the gentleman, the prior,
16 Mr. Reilly, who served time in prison. Probably
17 not a good choice.

18 THE DEFENDANT: No.

19 THE COURT: Mr. Wheeler, probably not a good
20 choice.

21 So the thing about a rider is it gives
22 you skills that apparently you do not have at this
23 time.

24 Now, I recognize that right now you're
25 feeling like you could conquer the world.

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1 fact, the case, that makes him a pretty bad guy
2 because for him to allow you to use
3 methamphetamine knowing what it does to you and
4 puts you at risk makes him a bad guy. It also
5 tells me that if he cared about you, he would not
6 put you in a place where you would be facing the
7 charges that you're facing. He would not be
8 dealing drugs out of your home. If I'm to believe
9 everything you've told me, he would not be doing
10 that.

11 So there's a lot of lifestyle changes
12 that are going to have to happen for you to be
13 successful and I think you're going to have
14 trouble with that. Given the fact that you
15 couldn't control yourself in jail, I think you're
16 going to have trouble with that.

17 And I'm sorry, Ms. Montrose, but I'm a
18 judge when I say if you do this, this is what's
19 going to happen, that's what's going to happen. I
20 recognize there's a lot of judges who will yell
21 and scream at the defendant and make all kinds of
22 threats but never follow through. I think that's
23 a huge mistake. If you're going to threaten it,
24 you'd better be willing to follow through,
25 otherwise don't threaten it. It's kind of like

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1 THE DEFENDANT: I don't, though.

2 THE COURT: Well, you're -- you're telling
3 me that you are confident that you can do well on
4 probation. I'm here to tell you that you don't
5 have -- I'm sure you would try. I heard what you
6 said. I'm sure you would try. But you don't have
7 those skills right now. You don't have the skills
8 to go out and be on your own because you're not
9 going to be with Mr. Wheeler, support yourself,
10 stay away from drugs, and do all of the things
11 that are necessary for you to succeed.

12 So if I put you on probation right now,
13 it seems to me I'm setting you up to fail and I
14 don't want to do that. I want to set you up to
15 succeed.

16 And so, Ms. Wheeler, I really do think
17 -- not Ms. Wheeler -- here we go. My mistake.
18 Ms. Montrose, I want to do what I think is going
19 to give you the best opportunity to succeed. And
20 so I am going to retain jurisdiction because I
21 find right now if I were to place you on
22 probation, you would continue to commit crime.
23 Even though this is your first felony, it's not
24 your first rodeo, so to speak. You've had
25 problems with criminal activity in the past. And

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1 so I want to see if we can stop that. When you
2 think about the fact that you're 42 years of age,
3 you have almost no work history that was reported
4 in the presentence report and you have a number of
5 problems including controlled
6 substance/frequenting back in 2009 and resisting
7 and obstructing, a lot of failing to get a
8 driver's license -- and why is that important?
9 You smile and you don't take it seriously, but let
10 me --

11 THE DEFENDANT: Yeah, I do.

12 THE COURT: Let's -- I want you to listen
13 for a second. Here's why that's important to me.
14 Because you've got a lot of them. It tells me you
15 don't think the rules apply. Ms. Montrose, the
16 rules apply to everyone. Why is that important?
17 Getting a driver's license is the easiest thing we
18 as people who want to drive have to do. It's not
19 hard. It's not expensive. And it's -- you don't
20 have to be real smart. You don't have to have a
21 high school degree. You can actually barely speak
22 English and get a driver's license.

23 So the fact of the matter is when I see
24 someone with this many driving without privileges,
25 it tells me you have difficulty following the

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1 it. It's kind of -- I'm trying to use some
2 psychology here.

3 So -- and I also want to say one more
4 thing because I think you've got -- it's -- I
5 think it's your sister and your mother or
6 somebody.

7 THE DEFENDANT: It's my mother.

8 THE COURT: It's your mother. She looks
9 like your sister.

10 THE DEFENDANT: Thank you.

11 THE COURT: She's here. When I do this, I
12 am not making a judgment about you as a person.
13 That's not up to me. I don't know what's in your
14 heart. You seem like a really nice person. Okay?
15 I'm not talking about your mother. I'm talking
16 about you. I don't know your mom. I haven't read
17 a presentence report on your mom.

18 THE DEFENDANT: No, there isn't one.

19 THE COURT: You seem like a very nice
20 person, but you're making some very bad choices.
21 Those bad choices are going to get you into
22 prison. That's what's going to happen if you
23 continue down this path.

24 All I'm being asked to do is to
25 determine what would be an appropriate consequence

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1 rules. That may seem like a little one, but it's
2 not a little one. It puts everyone else at risk
3 when you drive and you don't have a license
4 because if you don't have a license, you probably
5 don't have insurance either. So the fact of the
6 matter is you shouldn't be driving. It's a
7 privilege.

8 When I look at all this, Ms. Montrose,
9 I see someone who does need a retained
10 jurisdiction.

11 Now, I'm not going to make a
12 recommendation to the Department of Correction and
13 here's why. I'm fairly well known with the
14 Department of Correction. If I make a
15 recommendation -- and it's usually not CAPP. They
16 know that. If I say CAPP, I've had them --
17 because I think the CAPP rider would be perfect
18 for you because you can get a GED and you can do
19 all of those things. If I say CAPP, they probably
20 won't give it to you. So -- because usually what
21 I say is if you give them CAPP, I'm not going to
22 place them on probation. And that's how strongly
23 I feel because most of the time I don't think it's
24 appropriate. I have had really good luck by not
25 -- with people going to CAPP if I don't recommend

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1 that will help you make better choices. That's
2 what I intend to do. Okay?

3 So what I'm going to do is this because
4 my primary concern here is rehabilitation. I
5 don't think you're a danger to the community, but
6 you are really not making wise choices.

7 I'm going to sentence you to the
8 custody of the Idaho State Board of Correction
9 under the Unified Sentence Law of the State of
10 Idaho for an aggregate of ten years with three
11 fixed followed by seven indeterminate. I'm going
12 to remand you to the custody of the sheriff of
13 this county to be delivered to the proper agent of
14 the State Board of Correction in execution of the
15 sentence. Any days that were served prior to the
16 entry of this judgment you'll be given credit for.
17 In addition, I will exonerate any bond.

18 It is further ordered the Court will
19 retain jurisdiction over the defendant for an
20 indeterminate period of time not to exceed 365
21 days as provided by Idaho Code 19-2601. I am not
22 going to make a recommendation, however, if you do
23 not receive probation, credit will be given for
24 any days that were served prior to the entry of
25 this judgment.

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1 It is further ordered that you shall
2 provide a DNA sample and -- to the Department of
3 Correction pursuant to 19-5501. I am imposing a
4 \$5,000 fine, but \$4,000 is suspended. I am
5 requiring you to reimburse Elmore County \$250 for
6 the public defender and am imposing restitution in
7 the amount of \$100.

8 Now, you have the right to appeal. If
9 you cannot afford an attorney, you can request to
10 have one appointed at public expense. Your appeal
11 has to be filed within 42 days of the entry of a
12 written order either placing you on probation
13 following the retained jurisdiction or
14 relinquishing jurisdiction.

15 And I agree with you, you've been
16 spending enough time waiting to get on with
17 whatever is going to happen. Now, I will point
18 out that all of those -- all of those requests
19 were at your request that we continue the matter.
20 So that's why. However, I take this job really
21 seriously. The judgment will be entered today so
22 that you will be free to be placed on the retained
23 jurisdiction.

24 I will see you when you come back. I
25 want you to succeed. It will be hard for me to

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1 Two separate kinds of no-contacts. Ms. Hamilton
2 can explain that to you.
3 Okay. Then I will see you when you get
4 back. Good luck.

5 (Recess)
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1 envision you not going on probation, but obviously
2 if you behave really badly, you'll get a
3 relinquishment suggestion. I doubt that's going
4 to happen, so -- but make sure it doesn't.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Then I will see you
7 when you get back.

8 Oh, yes, I'm sorry, I'm ordering court
9 costs as well. I apologize.

10 I will see you when you return. And I
11 hope at that time to be able to place you on
12 probation, but remember there will be a no-contact
13 with Mr. Wheeler. There are a whole bunch people
14 there's no contact -- there will be a no-contact
15 orders with.

16 THE DEFENDANT: And when will those be
17 signed? When will those be given?

18 THE COURT: Those will be given out at
19 probation. They're not -- these are going to be
20 no contacts that are going to be as a condition of
21 probation. The reason that's important is if I
22 enter an official no-contact pursuant to statute
23 and you disobey it, you could be charged with a
24 new crime. If I make it a condition of probation,
25 you could be found in violation of your probation.

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REPORTER'S CERTIFICATE

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4 I, KIM I. MADSEN, Official Court Reporter, County
5 of Elmore, State of Idaho, hereby certify:
6 That I am the reporter who took the proceedings
7 had in the above-entitled action in machine
8 shorthand and thereafter the same was reduced into
9 typewriting under my direct supervision; and
10 That the foregoing transcript contains a full,
11 true, and accurate record of the proceedings had
12 in the above and foregoing cause, which was heard
13 at Mountain Home, Idaho.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this ___ day of ___, 2015.
16
17
18
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20 
21 KIM I. MADSEN, Official Court Reporter
22 CSR No. 428
23
24
25